

HAWAII CONDOMINIUM BULLETIN

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Unregistered Condominium Hotel Operators Scrutinized

The Department of Commerce and Consumer Affairs has secured a stipulated judgment, permanent injunction and order against Niihau Apartment Hotel, Inc. and its officers. Defendants were sued for failing to register as a condominium hotel operator.

The complaint alleged that defendants had been renting condominium apartments for less than thirty days. In addition, the complaint alleged that defendants had not registered as a condominium hotel operator. Defendants agreed to pay the State of Hawaii \$1,000 of a \$5,000 fine. Defendants also agreed not to engage in any activity requiring a license or

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Registration Required by January 1, 1993

Condominium associations with six or more apartments, condominium managing agents, and condominium hotel operators are reminded that state law requires them to register each year with the Real Estate Commission.

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What is a Condominium Hotel Operator?

Any person(s) or entity providing transient lodging in condominium apartments for periods of less than thirty days are required to register as a condominium hotel operator. "Hotel-type pools" are considered condominium hotel operators.

Any operator failing to register shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of apartments utilized as a condominium hotel. Each month or fraction of a month of non-compliance shall be deemed a new and separate violation. In addition, other penalties may include a fine not less than \$500 and not more than \$2,500 for each unlawful act or practice.

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Letter from the Vice Chair. . .

'Dear Condominium Owners:

As this issue goes to press, Clifford Higa has been appointed Director of the Department of Commerce and Consumer Affairs, which oversees the Real Estate Commission. Meanwhile, Hurricane Iniki and its aftermath have been difficult, if not traumatic, for many apartment owners and directors, especially for those who own apartments on Kauai or the Waianae coast of Oahu. Our hearts go out to those of you who have endured the catastrophe with remarkable resolve and unquestioned courage.

As the recovery continues, we hope that this bulletin will assist associations in rebuilding efforts. For those fortunate associations which escaped damage, we hope that this bulletin will aid in preparing and adopting disaster management plans for the future.

Many businesses or professions participating in the rebuilding are subject to oversight or regulation by the Department of Commerce and Consumer Affairs, of which the Real Estate Commission is a part.

This issue's Reference File is devoted to disaster recovery, management and preparedness. This issue's Ask the Condominium Specialists column also discusses disaster recovery in light of Chapter 514A, the Condominium Property Regime Act. In addition, this issue includes reminders of the annual registration required of associations, condominium managing agents and condominium hotel operators.

During October and November, the Hawaii Real Estate Research and Education Center presented seminars on future major repair and replacement reserves. The Condominium Reserves Reference Manual is now available from the Center. Work is continuing on administrative rules to clarify and provide further detail on the reserve law.

Should you have questions concerning the information we have sent you, please feel free to write to or call (586-2646) the Commission's condominium specialists.

Very truly yours,

*Carol Mon Lee, Vice Chair
Condominium and
Cooperative Review Committee*

Ask the Condominium Specialists

Q. Our condominium was severely damaged by the hurricane. How does the condominium statute apply to our situation?

A. Both the association and individual owners should: consult the declaration and bylaws as to repair and rebuilding; file claims with their respective insurance carriers; seek cash grants and reduced interest or no down payment loans at the Disaster Assistance Centers; consult with an attorney or managing agent.

Section 514A-93.5, Hawaii Revised Statutes, permits removal of abandoned property after notice to owners.

Repair, rehabilitation, or rebuilding will require coordination and cooperation among the owners. Obtaining and using the insurance or loan proceeds may be complex since Section 514A-86, Hawaii Revised Statutes, requires the association to insure the interior walls and certain other portions of apartments.

Only thirty days notice is required before any maintenance fee increase (Section 514A-92.2, Hawaii Revised Statutes). However, any association borrowing of money requires approval by a majority of the common interest and by a majority of the apartments (Section 514A-82.3, Hawaii Revised Statutes).

Q. May reserve funds be used to repair hurricane damage?

A. Subject to the declaration or bylaws, yes. Section 514A-83.6, Hawaii Revised Statutes, permits use of reserves for emergencies. However, the fund must be repaid within three years. Although the fund must have 50 percent of an adequate reserve by January 1, 2000, reserve requirements may be lower after repairs.

Disaster Recovery, Management and Preparedness

Although recovering from Hurricane Iniki may be foremost in many condominium owner's mind, Hawaii should be mindful of other disasters that may occur. According to the State of Hawaii Civil Defense pamphlet, *Emergency Checklist*, the following disasters may also threaten Hawaii:

Natural disasters

Drought, earthquakes, floods, forest fires, high surf, high winds, hurricanes, land slides, mud slides, thunderstorm, tornadoes, tropical storms, tsunamis, volcanic eruptions, waterspouts;

Technological Disasters

Accidental missile launches, dam disasters, explosions, hazardous materials accidents, oil spills, pollution (air, oil, water), transportation disruptions, utility failures (i.e., non-functioning elevators);

Other disasters

Civil disturbances, epidemics and infections, resource shortages, wars.

In addition, each condominium project may be exposed to localized disasters such as: elevator failures, frozen or broken pipes, HVAC failures; interruption of utilities, boiler explosion, structural failures, toxic chemicals or gases.¹

Recovering From Disasters

After a catastrophe, the most pressing need is information about where to obtain food,

water, and shelter. Soon after these emergency needs have been met, condominium owners face the challenge of assessing the damage and estimating the costs to repair or replace association properties as well as their own personal properties.

Initially, all relief agencies may be represented at a Disaster Assistance Center in a particular neighborhood. When the disaster center ceases to operate, condominium owners and board of directors may continue to deal directly with the appropriate agencies. The following chart of services (see page 4) has been excerpted from a 1989 Hawaii State Civil Defense pamphlet on "*Earthquake Preparedness.*"

Preparing for Disasters

For those associations which have been spared the damaging effects of Hurricane Iniki, now is the time to prepare and develop a disaster management plan. For those associations with a disaster management plan, now is the time to update the plan in light of the unforeseeable massive destruction caused by Hurricane Iniki. Those associations with a disaster management plan attest that such forethought minimizes property losses and injuries. These associations and condominium owners have implemented the preparedness lessons learned from Hurricane Iwa and other past disasters.

A review of the brochures and articles on disaster planning suggests that management plans should be written, and include provisions detailing for example:

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1. Ochoa, Philip. "Disaster Management For Community Associations." CAI-GAP Report 14. Community Associations Institute, p. 2.

Services Provided by Disaster Assistance Centers²

In time of major emergency, disaster relief agencies will pool their services. Together, they will comprise "one-stop centers for emergency relief." These Centers will be set up in areas convenient for you and your neighbors. In a major earthquake, response may not be available immediately.

AGENCY OR ORGANIZATION	SERVICES PROVIDED
PRIVATE RELIEF AGENCIES	
(American National Red Cross, Salvation Army, [Hawaii Food Bank], . . . etc.)	Emergency assistance to satisfy immediate needs such as food, shelter, clothing, medical supplies, and welfare inquiry.
LOCAL	
City/County [Real Property] Tax Assessor	Advice and assistance in obtaining property tax relief for losses resulting from the disaster.
Consumer Protection Agencies	[Information about] Protection against unscrupulous business practices of contractors and merchants.
Health Departments	Advice and assistance in matters related to health problems resulting from the disaster.
Welfare Departments	Distribution of food stamps under State Dept. of Social Services and U. S. Dept. of Agriculture, Food and Nutrition Division.
Private Service Groups	Assistance in cleanup and transportation.
STATE	
Employment Development [Labor] Department	State unemployment payments and disaster unemployment assistance; guidance relating to new employment and providing temporary labor.
Department of Social Services	Distribution of food stamps; redirection or continuation of normal services to welfare recipients.
Franchise Tax Board	[Natural Disaster Claims Commission to be established; will be the State of Hawaii's equivalent to the Franchise Board of California] Advise and assistance in obtaining tax relief for disaster casualty losses.
FEDERAL	
Federal Emergency Management Agency (FEMA)	[National] Agency designated to coordinate disaster response. Editor's note — FEMA assistance includes: grant programs (not loans) to persons who have suffered losses not covered by insurance and who cannot get a Small Business Administration loan (SBA); processing SBA loans; temporary housing- grant program providing rental checks for victims whose homes have been destroyed or severely damaged ; unemployment compensation assistance to person who have lost a job because of the hurricane through the U.S. Dept. Of Labor. ³
Small Business Administration (SBA)	Assistance in obtaining loans for repair, rehabilitation, or replacement of damaged or destroyed property.
Department of Housing and Urban Development (HUD)	Temporary housing or other emergency shelter; temporary mortgage or rental payments for persons faced with loss of their residences because of disaster-related financial hardships.
Farmers Home Administration Department of Agriculture (FmHA)	Assistance in obtaining loans for: essential operation costs; land restoration; repair or replacement of damaged structures, property, or equipment; and the replacement of livestock.
Internal Revenue Service (IRS)	Advice and assistance in obtaining income tax relief for disaster casualty losses.
Social Security Administration	Assistance to Social Security recipients in expediting delivery of checks delayed by the disaster, assistance in applying for Social Security disability and survivor benefits.
Veterans Administration (VA)	Assistance to homeowners whose homes are financed through VA loans; information on VA hospitalization.
OTHER	
Young Lawyers Section (YLS) American Bar Association	Legal assistance to families with disaster-related problems.

2. Lafferty & Associates. *Earthquake Preparedness*. Hawaii State Civil Defense, 1989.

3. *The Honolulu Advertiser*. "Agencies, government crank up aid services." September 12, 1992 p. A-3.

(Continued from page 3)

- emergency procedures for every foreseeable type of disaster for a particular area;
- annual planning, review and update of the disaster plans;
- inventory and documentation of association property including specific descriptions and quantities;
- duplication of important association papers and storage;
- insurance planning for adequate peril coverage and amounts;
- contingency budgets for uninsured losses;
- procedures for filing insurance claims;
- acquisition and storage of emergency equipment and supplies;
- designation of roles and responsibilities of volunteers and staff involved in the emergency response;
- designation of a final decision maker and alternate;
- procedures for preventing further property damage;
- procedures for securing the physical plant;
- location of cut-off valves or switches;
- procedures for interrupting utilities;
- emergency communication procedures;
- procedures for, and designation of a communication command post;
- listing of emergency phone numbers;
- communication of emergency procedures to condominium residents prior to the disaster;
- procedures for evacuation of residents including the elderly, the disabled, and unattended children;
- rehearsals or drills of emergency response and evacuation.

Annotated Bibliography Disaster Recovery

Hurricane Iniki Recovery Manual for Small Businesses and Home Owners. American Institute of Architects, 1992. May be obtained from the Honolulu Chapter of the American Institute of Architects, 1128 Nuuanu Avenue, 1st floor, Honolulu, Hawaii 96817. On Kauai, the manual may be obtained at the Kauai Office of Emergency Permitting. Provides useful information about permits and code requirements, building standards, and how to rebuild.

Tips on Handling Your Insurance Claim. Federal Emergency Management Agency, L-132/June 1982. May be available through your county civil defense office. Provides useful information about how to file your insurance claim, what the policy coverage may include or exclude and suggestions for filing for federal assistance for recovery of property losses not covered by insurance.

Disaster Management Preparedness for Association

Budd, Kenneth. *"If community association property is destroyed, will your insurance pay to meet updated building codes?"* *Common Ground*, Community Associations Institute. (September/October 1992), page 17. Discusses the limitations and exclusions of typical association insurance policies. Includes case histories of recovering associations and the problems they suffer because of inadequate insurance coverage.

Klug, C.J. PCAM. *"Developing a Disaster Plan,"* *Common Ground* (September/October 1992), page 27. Suggests what a typical disaster plan should include: designation of an emergency director (and alternate); establishment of an emergency operations center; establishment of triage and morgue area; an inventory of supplies; for large develop-

ments division of the community into zones with block captains; identification of condominium residents with emergency skills such as a medical doctor and amateur radio trainee or license operator; annual review.

Ochoa, Philip. *"Disaster Management for Community Associations."* CAI-GAP Report 14. Community Associations Institute, 1630 Duke Street P. O. Box 25037, Alexandria VA 22313, (703) 836-6905, (1985). Describes and illustrates a disaster management program involving seven stages: perils consideration, planning, preparation, prevention of damage/disruption; peril occurrence, post-peril evaluation and celebration. Recommends among other things, establishment of an owner's standing or steering committee to develop the plan, implement its results, conduct rehearsals, and adjustment of the program annually. Includes sample forms for developing the plan.

Preparedness for Households

GTE Hawaiian Tel. *"Civil Defense Warnings and Procedures."* GTE Hawaiian Telephone Directory, 1992. Includes information about civil defense warnings and procedures, do's, and don'ts and evacuation maps.

The following publications may be available from your county civil defense agency.

Emergency Checklist. State of Hawaii Civil Defense. 3949 Diamond Head Road, Honolulu, Hawaii 96816. Includes checklists for: a home survival kit, first aid kit, supplies for preparing meals in an emergency, and a five-day emergency food supply (complete with amounts and shelf life information).

Emergency Preparedness Publications. Federal Emergency Management Agency publication L-164 (September 1, 1991). Summarizes FEMA's emergency preparedness publications. Includes an order blank.

Hawaii Hurricanes and Safety Measures With Central Pacific Tracking Chart. Federal Emergency Management Agency and Hawaii State Civil Defense in cooperation with the National Oceanic and Atmospheric Administration, U.S. Dept of Commerce NOAA/PA 85002. Explains how storms, floods, hurricanes and winds are generated; defines different types of storms, warnings, hurricanes warnings, watch, flash foods etc; explains how to track a hurricane; provides a checklist of responses to a hurricane before, during, and after hurricanes.

Lafferty & Associates. Earthquake Preparedness. Hawaii State Civil Defense, (1989). Includes information about preparing, riding out, and recovering from an earthquake; information may be applicable to other types of disasters. Includes checklists, forms, procedures for preparing households for an earthquake.

Preparedness in High-Rise Buildings. Earthquake Hazards Reduction Series 10. FEMA 76, (July 1985). Explains and illustrates: what will happen (in an earthquake); what you can do now (store emergency supplies, know emergency procedures during an earthquake, and after an earthquake)

San Fernando Valley Child Guidance Clinic, 9560 Zeizah Avenue, Northridge, California 91325. **Coping With Children's Reactions to Earthquakes and Other Disasters.** FEMA 48 /July 1986. Provides an overview to understanding children's fears and reactions to earthquakes and other disasters. Also makes some specific recommendations for helping children through and after the disaster.

Watch Out... Storms Ahead! Owlle Skywarn's Weather Book. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Federal Emergency Management Agency. An illustrated easy to read overview of disasters, definitions (explanations of warnings for each disaster), and do's and don'ts for each disaster.

Although this reference article did not discuss preparedness for nuclear disaster, the civil defense agency on each island may have available literature on this subject.

Condominium Mediation Service on Maui

The Real Estate Commission has executed a contract with Mediation Services of Maui, Inc. (MSM) to provide alternative dispute resolution services to Maui's condominium community. Individuals or groups eligible to participate in the mediation process are condominium owners, tenants, board members, association employees acting within the scope of their employment and condominium managing agents.

The areas of dispute which MSM will handle are condo-

minium association governance and management, conflicts surrounding the condominium declaration, bylaws, and house rules (Chapter 514A Hawaii Revised Statutes and Chapter 107 Hawaii Administrative Rules).

In addition to 46 hours of mediation skills training, volunteer mediators receive 12 hours of specialized training in mediating condominium disputes. Mediators do not act as counselors or legal advisors; instead, they work the dispu-

tants through a process which allows each side to air its concerns and arrive at a solution that both will honor.

The cost for mediation is a one-time \$10 fee. With the large condominium community on Maui, MSM will provide a valuable service to those in need of dispute resolution at a reasonable cost. MSM is located in the Cameron Center in Wailuku (see box below).

Mediation service is provided on other islands by the Neighborhood Justice Center (see box below).

On Maui:

Mediation Services of Maui, Inc.
Cameron Center, 95 Mahalani Street
Wailuku, Maui,
Phone 244-5744.

For all other islands:

Neighborhood Justice Center
200 North Vineyard Street
Honolulu, Hawaii
Phone 521-6767.

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Unregistered Condominium. . .

(Continued from page 1)

registration under Chapter 467, Hawaii Revised Statutes, until a license or registration is obtained. Finally, defendants agreed to pay the remaining \$4,000 of the fine if they violate the court order.

In a declaratory ruling request, the Real Estate Commission has ruled that solicitation of apartment owners and renting of the apartments to visitors together with even indirect

receipt of compensation are real estate activities requiring a real estate license.

The ruling came after a travel agent, Frances Sueco (petitioner), requested a declaratory ruling concerning her activities. Sueco argued that she was not required to register as a condominium hotel operator because she was providing travel accommodations and did not receive compensation directly.

The hearings officer, Rodney A. Maile, noted that petitioner "engaged in seeking vacant [apartments] to rent to travelers, and [kept] the difference in rent between the amounts charged by the owners and the amounts charged by Petitioner. . ." Based on the hearing officer's recommendation, the Real Estate Commission declared that Sueco's activities require registration as a condominium hotel operator.

Registration Required. . .

(Continued from page 1)

The law, as stated in sections 514A-95.1, 514A-95, and 467-30, Hawaii Revised Statutes, requires registration by January 1 of each year.

Registration forms together with instructions for completing them were mailed to those previously registered with the Real Estate Commission. Condominium associations that have not registered may request forms by telephoning 586-2644 (or from the Neighbor Islands, 1-800-468-4644, extension 6-2644)

Condominium Reserves Reference Manual

Now Available

With funding from the Real Estate Commission's Condominium Management Education Fund, the Hawaii Real Estate Research and Education Center has developed the Condominium Reserves Reference Manual to assist condominium associations and their boards in estimating how much money to reserve for future major repairs and maintenance. Existing associations are required to complete a reserve study during 1993.

Seminars were presented on the Big Island, Maui and Oahu with a hands-on approach to the topic of the reserves study. The seminar for Kauai, which had been cancelled due to Hurricane Iniki, will be rescheduled in early Fall 1993.

Each registered condominium association, through its contact person, is entitled to receive one complimentary copy of the manual. Additional copies are available at \$30 each.

For further information, please call the Center at 956-7892 (from the Neighbor Islands, 1-800-642-4756).